

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE FLINT WATER LITIGATION

Case No. 5:16-cv-10444-JEL-MKM
Hon. Judith E. Levy

This Document Relates To:
Bellwether III Cases

Case No. 5:17-cv-11166-JEL-MKM
Case No. 5:17-cv-11165-JEL-MKM

**DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH
AMERICA, INC., AND VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC’S MOTION TO SEAL PORTIONS OF
RESPONSE TO PLAINTIFFS’ BRIEF REGARDING DR. AARON
SPECHT’S MATLAB CODE**

Defendants Veolia North America, LLC, Veolia North America, Inc., and Veolia Water North America Operating Services, LLC (VNA) move this Court under E.D. Mich. Local Rule 5.3(b) and this Court’s Confidentiality Order, ECF No. 1162-3, for an order to seal portions of its Response to Plaintiffs’ Brief Regarding Dr. Aaron Specht’s MATLAB Code and Exhibits 1 and 2 thereto. Exhibit 1 contains excerpts of deposition transcripts and Exhibit 2 contains the results of Dr. Specht’s bone lead measurements that have been designated by Plaintiffs as “Highly Confidential” under this Court’s Confidentiality Order. VNA’s response refers to these confidential materials.

VNA has attached its Response to Plaintiffs’ Brief Regarding Dr. Aaron Specht’s MATLAB Code and Exhibits 1 and 2 in redacted and unredacted form,

with the language that VNA proposes to redact highlighted on the unredacted versions. Further, as Local Rule 7.1(a) requires, VNA conferred with Plaintiffs' counsel concerning this motion but received no response at the time of filing.

Respectfully submitted,

**CAMPBELL, CONROY & O'NEIL
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Dated: March 3, 2023

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE FLINT WATER LITIGATION

Case No. 5:16-cv-10444-JEL-MKM
Hon. Judith E. Levy

This Document Relates To:

Gaddy et al. v. Flint et al.

Meeks et al. v. Flint et al.

Case No. 5:17-cv-11166-JEL-MKM

Case No. 5:17-cv-11165-JEL-MKM

**DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH
AMERICA, INC., AND VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC'S BRIEF IN SUPPORT OF THEIR
MOTION TO SEAL PORTIONS OF RESPONSE TO PLAINTIFFS' BRIEF
REGARDING DR. AARON SPECHT'S MATLAB CODE**

STATEMENT OF THE ISSUE PRESENTED

1. Should the Court permit VNA to file portions of its Response to Plaintiffs' Brief Regarding Dr. Aaron Specht's MATLAB Code and Exhibits 1 and 2 thereto under seal?

VNA answers: "Yes."

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Shane Group, Inc. v. Blue Cross Blue Shield of Michigan,
825 F.3d 299 (6th Cir. 2016)

E.D. Mich. L. R. 5.3(b)(3)(A)

INTRODUCTION

VNA moves this Court for an order to shield from public disclosure certain information that Plaintiffs have deemed confidential under this Court's Confidentiality Order. In particular, VNA seeks to file under seal portions of its Response to Plaintiffs' Brief Regarding Dr. Aaron Specht's MATLAB Code and Exhibits 1 and 2 thereto. Exhibit 1 contains excerpts of deposition transcripts and Exhibit 2 contains the results of Dr. Specht's bone lead measurements that have been designated by Plaintiffs as "Highly Confidential" under this Court's Confidentiality Order. VNA's response refers to these confidential materials. VNA files this motion to advance the purposes of this Court's Confidentiality Order and afford Plaintiffs the chance to protect private information to the extent consistent with the Sixth Circuit's mandate in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), and this Court's own prior orders on confidential information. VNA has conferred with Plaintiffs' counsel, who have informed VNA that Plaintiffs wish to keep this material confidential.

BACKGROUND

VNA has prepared its Response to Plaintiffs' Brief Regarding Dr. Aaron Specht's MATLAB Code. Most of the response can be filed publicly, but the response attaches and discusses excerpts from Dr. Specht's deposition, along with Dr. Specht's bone lead measurements for the Bellwether III Plaintiffs, that have been

designated by Plaintiffs as “Highly Confidential” under the Court’s Confidentiality Order. To date, this evidence has not been made public.

LEGAL STANDARD

“[T]rial courts have always been afforded the power to seal their records” under certain circumstances. *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 474 (6th Cir. 1983); *see Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (holding that the court maintains “supervisory power over its own records and files” and may issue orders sealing judicial records or court filings when appropriate); Fed R. Civ. P. 5.2(d); L.R. 5.3(b).

“[C]ourts have long recognized . . . a ‘strong presumption in favor of openness’ as to court records.” *Shane Grp.*, 825 F.3d at 305. But “the presumptive right of the public to inspect and copy judicial documents and files” may be overcome where the “interests of privacy outweigh the public’s right to know.” *In re Knoxville News-Sentinel*, 723 F.2d at 474; *see Shane Grp.*, 825 F.3d at 307 (stating that the “interests in favor of closure” should be weighed with “the public interest in access to court records”).

To justify a sealing order, a party “must provide compelling reasons to seal the documents and demonstrate that the sealing is narrowly tailored to those reasons.” *Beauchamp v. Fed. Home Loan Mortg. Corp.*, 658 F. App’x 202, 207 (6th Cir. 2016). The moving party may satisfy its burden on a motion to seal filings by

“showing that ‘disclosure will work a clearly defined and serious injury.’” *Shane Grp.*, 825 F.3d at 307. E.D. Mich. Local Rule 5.3(b)(3)(A) outlines the specific steps that a party must take to make the required showing in this district.

In filing this motion, VNA does not concede any part of Plaintiffs’ claims. *See* E.D. Mich. L.R. 5.3(b)(3)(C)(iv) (“Statements made in any motions or responses to motions filed under this rule are not admissible by any party to prove or disprove any element of a disputed claim.”). Further, as the Court has recognized, filing items under seal does not necessarily establish that those items will be sealed when presented at trial. *See* Tr. of July 29, 2020, Status Conference 19, *In re Flint Water Litig.*, No. 16-cv-10444 ECF No. 1224, Page.ID 38474.

ARGUMENT

VNA seeks to file under seal portions of its Response to Plaintiffs’ Brief Regarding Dr. Aaron Specht’s MATLAB Code and Exhibits 1 and 2 thereto. Exhibit 1 contains excerpts from Dr. Specht’s deposition. Exhibit 2 discusses Dr. Specht’s bone lead measurements. These materials have been designated by Plaintiffs as “Highly Confidential” under this Court’s Confidentiality Order. Courts may seal documents to protect “the privacy interests of participants or third parties.” *Hardesty v. Kroger Co.*, No. 16-cv-298, 2020 WL 3545676, at *1 (S.D. Ohio June 30, 2020) (citing *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983)).

VNA is seeking to seal only that information that Plaintiffs have insisted should be sealed. Exhibit 1 and the material discussed in Exhibit 2 has been designated as “Highly Confidential” by Plaintiffs under the Court’s Confidentiality Order. *See* E.D. Mich. L.R. 5.3(b)(3)(A)(iii). Plaintiffs’ counsel have confirmed that they believe the information should continue to be treated as confidential. Sealing Exhibits 1 and 2 and the references to those exhibits in VNA’s response brief should not impair the public’s ability to meaningfully evaluate the substance of Plaintiffs’ or VNA’s arguments on the merits of this case.

CONCLUSION

For these reasons, VNA asks this Court to grant the motion to seal and permit VNA to file under seal portions of its Response to Plaintiffs’ Brief Regarding Dr. Aaron Specht’s MATLAB Code and Exhibits 1 and 2 thereto.

Respectfully submitted,

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Veolia Water North America Operating Services, LLC*

Dated: March 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification to the ECF counsel of record.

Respectfully submitted,

/s/ James M. Campbell

Dated: March 3, 2023